

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 1:10-cv-00569-
	:	RJA
MARK ELLIOT ZUCKERBERG and	:	
FACEBOOK, INC.,	:	
	:	
Defendants.	:	
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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’ MOTION FOR
CLARIFICATION OF THE COURT’S ORDER REGARDING DISCOVERY ON
DEFENDANTS’ RULE 12(C) MOTION**

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PRELIMINARY STATEMENT

Defendants respectfully move for clarification of this Court's April 30, 2012 Order (Doc. No. 366) regarding discovery on Defendants' Motion for Judgment on the Pleadings. In that Order, the Court granted Ceglia limited discovery regarding two categories of information. *Id.* at 5. Defendants respectfully request that the Court clarify that these categories are limited to matters that directly concern (1) Ceglia's alleged rights and interests under the Work for Hire Document, and (2) the effect that the formation of Thefacebook LLC had on Ceglia's alleged rights and interests. Although these limitations are evident from the face of the Court's Order and the context in which it was issued, Ceglia has already repeatedly and willfully defied this Court's orders—and has been sanctioned accordingly (Doc. No. 283)—in an attempt to harass Defendants, disrupt Facebook's initial public offering, and ultimately coerce a settlement on his fraudulent claims. Defendants are therefore concerned that, absent clarification, Ceglia will deliberately misconstrue the Court's April 30 Order as providing a springboard for wide-ranging discovery into matters that have nothing to do with him or his claims. This misconduct will not only burden Defendants, but also burden the Court, which will be required to resolve multiple rounds of disputes regarding the scope of its April 30 Order. Accordingly, Defendants respectfully request that this Court clarify that discovery is limited to matters directly concerning Ceglia.

BACKGROUND

On March 26, 2012, Defendants moved to dismiss this case as a sanction for Ceglia's fraud on the Court, spoliation of evidence, and vexatious litigation misconduct. *See* Doc. No. 323. Defendants' motion and supporting expert reports detailed the overwhelming evidence gathered in expedited discovery—which spanned nearly nine months due to Ceglia's bad faith

litigation strategy of concealing and destroying evidence, and defying court orders—establishing that the Work for Hire Document on which Ceglia’s claims are based is a forgery, and that the purported emails between Ceglia and Zuckerberg quoted in Ceglia’s Amended Complaint are fabrications. Defendants also moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) on the grounds that, even if Ceglia’s fraudulent allegations are assumed to be true, his claims are barred by the statute of limitations and laches. *See* Doc. No. 321.

Defendants explained that, even on Ceglia’s own theory of the case—that Ceglia was injured when Zuckerberg formed Facebook, Inc. in July 2004 and provided Ceglia no stake in that corporation—Ceglia’s claims were time-barred. That is because, in April 2004, more than six years before Ceglia filed his original complaint, Zuckerberg created a different entity—Thefacebook LLC—and excluded Ceglia from ownership of that entity. Thus, any alleged injury to Ceglia first occurred in April 2004, not July 2004, and his claims are barred by the statute of limitations. *See id.* at 8-9.

Defendants also moved on March 26 to stay discovery pending a ruling on their dispositive motions. *See* Doc. No. 323. Defendants explained that a stay would prevent Ceglia from further abusing the judicial process and harassing Defendants until the Court has determined whether this lawsuit may proceed, and that Ceglia would suffer no prejudice from a stay. *Id.* at 1.

On April 4, after four hours of oral argument, the Court granted Defendants’ Motion to Stay Discovery in part. Doc. No. 348. The Court stayed general discovery and permitted only limited expert discovery relating to Defendants’ Motion to Dismiss. *Id.* With respect to Defendants’ Motion for Judgment on the Pleadings, the Court acknowledged at oral argument that because “it’s [Rule] 12(c) there really wouldn’t be any discovery,” and asked Ceglia’s

counsel at oral argument “[w]hat conceivable discovery [he] need[ed] to fairly oppose that motion.” Apr. 4, 2012 Hr’g Tr. at 211, 215. Ceglia’s counsel requested leave to respond in writing. *Id.* at 212. The Court granted that request and directed Ceglia, “within 7 days, to provide argument why discovery is necessary for a Rule 12(c) motion.” Doc. No. 348.

On April 11, Ceglia filed a memorandum of law arguing that Defendants had raised matters outside the pleadings in their Rule 12(c) motion when they contended that “Zuckerberg formed Thefacebook LLC in April 2004” and that the formation of that entity “divested or signaled the divesting of Plaintiff’s contractual interest in the ‘software, programming language and business interests’ listed in the contract as consideration for Plaintiff’s financial contribution to the business.” Doc. No. 349 at 4. Ceglia argued that he was therefore entitled to broad discovery on numerous matters outside the pleadings, including “what other Facebook-related entities exist and when they were formed, whether and when any ownership interests were transferred, whether documents exist discussing Zuckerberg’s decision to exclude Ceglia; and when information regarding Thefacebook LLC became publicly available.” *Id.* at 6. Ceglia also argued that he was entitled to discovery regarding the sealed records of previous litigation against Defendants, including *ConnectU, Inc. v. Facebook*, No. 07-10593 (D. Mass.). *See* Doc. No. 349 at 6-7 & n.1.

On April 18, Defendants filed their response and explained that they had not raised matters outside the pleadings in their Rule 12(c) motion because the fact that Zuckerberg formed Thefacebook LLC in April 2004 was “drawn directly from public records of which this Court may take judicial notice.” Doc. No. 353 at 5. Defendants also explained that the broad discovery requested by Ceglia was unnecessary to resolve the question whether Ceglia’s claims are barred by the statute of limitations, and that by seeking expansive discovery in the guise of

the claim that it was relevant to Defendants' Rule 12(c) motion, Ceglia was improperly attempting to circumvent both the Court's July 2011 expedited discovery order and the Court's April 4 decision to stay general discovery pending resolution of Defendants' dispositive motions. *Id.* at 1-2.

On April 25, Ceglia filed a reply brief and continued to insist that he was entitled to expansive discovery into matters such as "the reasons for" Facebook, Inc.'s acquisition of Thefacebook LLC in October 2004, "what assets these entities held, or what revenue they generated." Doc. No. 360 at 3.

On April 30, this Court rejected Ceglia's broad discovery requests. Doc. No. 366. Although the Court converted Defendants' Motion for Judgment on the Pleadings into a motion for partial summary judgment, the Court granted Ceglia only limited discovery with respect to two categories of information:

(1) assuming, *arguendo*, the Work for Hire contract dated April 28, 2003 is authentic, what intellectual property rights and other ownership interests were created by the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would give Plaintiff "a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience," and (2) how the formation of the LLC necessarily divested Plaintiff of any and all interest in the partnership's assets, including intellectual property rights.

Id. at 5. The Court limited Ceglia to serving interrogatories and document requests regarding these categories, and provided that depositions would not be permitted absent leave of the Court.

Id.

ARGUMENT

Defendants respectfully request that the Court clarify that the categories of discovery permitted by its April 30 Order are limited to matters that directly concern (1) Ceglia's alleged rights and interests under the Work for Hire Document, and (2) the effect that the formation of

Thefacebook LLC had on Ceglia's alleged rights and interests. In other words, the Court's Order does not permit broad discovery of information that has no direct connection to Ceglia.

Although these limitations on the scope of the discovery allowed under this Court's Order are self-evident, Defendants are concerned that, absent clarification, Ceglia will continue his ongoing campaign of harassment and abusive litigation misconduct by deliberately mischaracterizing the Court's Order as allowing broad discovery into matters wholly irrelevant to the statute of limitations and laches issues in this case.

The language of this Court's April 30 Order establishes that the Court granted Ceglia only limited discovery regarding matters that directly concern his alleged rights and interests under the Work for Hire Document and the effect on his rights and interests of the formation of Thefacebook LLC. The categories of information set out in the Court's Order are both expressly limited to information that directly relates to Ceglia. The first category in the Court's Order is confined to rights and interests "created by the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would give Plaintiff 'a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience.'" Doc. No. 366 at 5 (emphasis added). And the second category in the Court's Order is limited to "how the formation of the LLC necessarily divested Plaintiff of any and all interest in the partnership's assets." *Id.* (emphasis added).

The context in which this Court issued its Order confirms that Ceglia may only seek discovery directly concerning his alleged rights and interests. At oral argument, the Court questioned Ceglia's claim that discovery was necessary with respect to Defendants' Rule 12(c) motion, observing that because "it's [Rule] 12(c) there really wouldn't be any discovery," and asking Ceglia's counsel "[w]hat conceivable discovery [he] need[ed] to fairly oppose that

motion.” Apr. 4, 2012 Hr’g Tr. at 211, 215. In his subsequent briefs, Ceglia requested broad discovery into matters unrelated to his rights and interests, including “what other Facebook-related entities exist and when they were formed” (Doc. No. 349 at 6); “whether and when any ownership interests were transferred” (*id.*); and “the reasons for” Facebook, Inc.’s acquisition of Thefacebook LLC in October 2004, “what assets these entities held, or what revenue they generated.” Doc. No. 360 at 3. Ceglia also requested carte blanche to reopen the sealed records of the *ConnectU* litigation, regardless of whether those records mentioned Ceglia or bore any relation to him. *See* Doc. No. 349 at 6-7 & n.1. This Court denied Ceglia the unfettered discovery that he requested when it limited discovery to two particular categories of information, and when it further limited those categories to information concerning Ceglia’s alleged rights and interests.

Interpreting this Court’s April 30 Order to allow discovery unrelated to Ceglia’s purported rights and interests also would conflict with this Court’s previous decisions and undermine the orderly discovery process that this Court has pursued. This Court has consistently rejected Ceglia’s requests for plenary discovery before the Court resolves Defendants’ dispositive motions—both in July 2011, when the Court ordered expedited discovery to determine whether Ceglia’s lawsuit is a fraud (Doc. No. 83), and again on April 4, when the Court stayed general discovery and allowed only limited expert discovery relating to Defendants’ Motion to Dismiss. Doc. No. 348. The Court’s April 30 Order should be interpreted, consistent with those previous orders, to allow only limited discovery that directly concerns the application of the statute of limitations and laches to Ceglia’s claims.

However, Defendants are concerned that Ceglia will deliberately misconstrue this Court’s April 30 Order as permitting wide-ranging discovery on matters unrelated to Ceglia’s purported

rights and interests and unnecessary to resolving Defendants' Rule 12(c) motion. As Defendants explained in detail in requesting that the Court stay discovery pending a ruling on their dispositive motions, Ceglia and his counsel have made clear that they intend to pursue protracted discovery in an attempt to disrupt Facebook's initial public offering and coerce Defendants to settle Ceglia's fraudulent claims. *See* Doc. No. 323 at 2-4; *see also, e.g.*, Doc. No. 331, Declaration of Alexander H. Southwell dated March 26, 2012 ("Southwell Decl."), Ex. H (Ceglia stating in an email to the Daily Reporter in Wellsville: "You won't go public Mark [Zuckerberg], you won't IPO, you won't pass go I won't let you sell this company out from under me not while I have the power to stop you."). Indeed, during a telephonic meet-and-confer on March 14, 2012, Ceglia's counsel explained that they intended to seek incredibly expansive discovery over a period of 16 months that included, among other things, making forensic copies of and searching every computer used by Zuckerberg—and by every employee of Facebook—since 2003. Doc. No. 324, Southwell Decl. ¶ 52. Ceglia has also made clear that he is willing to defy this Court's orders to achieve his ends. Indeed, Defendants have been forced to file five motions to compel over the course of expedited discovery, all of which this Court granted. *See* Doc. Nos. 117, 152, 208, 272, 317. And the Court has already sanctioned Ceglia for demonstrating "a plain lack of respect" for court orders "which cannot be countenanced." Doc. No. 283 at 22.

To prevent Ceglia from willfully mischaracterizing the scope of this Court's April 30 Order and burdening Defendants with overly broad discovery requests, Defendants respectfully request that the Court clarify that Ceglia may only request discovery on matters that directly concern (1) Ceglia's alleged rights and interests under the Work for Hire Document, and (2) the effect that the formation of Thefacebook LLC had on Ceglia's alleged rights and interests.

Defendants respectfully submit that this Court could clarify its April 30 Order in this manner, and minimize the potential for confusion or disputes, by adopting minor revisions to the text of that Order. Specifically, Defendants propose that the Court substitute the following language for the final two sentences of its Order:

Plaintiff is thus permitted discovery under Fed. R. Civ. P. 56(d), limited to serving, within 60 days, interrogatories and document requests directly concerning (1) assuming, *arguendo*, the Work for Hire contract dated April 28, 2003 is authentic, what were Plaintiff's intellectual property rights and other ownership interests under the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would own "a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience," and (2) the effect of the formation of the LLC on Plaintiff's interest in the partnership's assets, including Plaintiff's intellectual property rights. Depositions will not be permitted absent leave of the Court.¹

Whether or not the Court adopts this proposed clarifying language, Defendants believe that examples of appropriate discovery requests under the Court's April 30 Order might include:

- Interrogatories regarding the alleged rights and interests conveyed to Ceglia by the Work for Hire Document.
- Interrogatories regarding Ceglia's alleged rights and interests in Facebook pursuant to the Work for Hire Document.
- Interrogatories regarding the effect of the formation of Thefacebook LLC on Ceglia's alleged rights and interests.

¹ By adopting the proposed language above, the Court would be making minimal changes to the original language in its Order. Those changes are identified here: "Plaintiff is thus permitted discovery under Fed. R. Civ. P. 56(d), limited to serving, within 60 days, interrogatories and document requests ~~regarding~~ directly concerning (1) assuming, *arguendo*, the Work for Hire contract dated April 28, 2003 is authentic, what ~~were Plaintiff's~~ were Plaintiff's intellectual property rights and other ownership interests ~~were created by~~ under the contract's language providing that Plaintiff, in exchange for helping fund Zuckerberg's development of FaceBook, would ~~give Plaintiff own~~ give Plaintiff own "a half interest (50%) in the software, programming language and business interests derived from the expansion of that service to a larger audience," and (2) ~~how the effect of~~ the effect of the formation of the LLC ~~necessarily divested Plaintiff of any and all~~ on Plaintiff's interest in the partnership's assets, including Plaintiff's intellectual property rights. Depositions will not be permitted absent leave of the Court."

- Interrogatories regarding Ceglia's alleged rights and interests in Thefacebook LLC.
- Requests for documents concerning discussions between Zuckerberg and Ceglia regarding Ceglia's alleged rights and interests under the Work for Hire Document.
- Requests for documents concerning the alleged rights or interests that Ceglia has in Facebook under the Work for Hire Document.
- Requests for documents reflecting a decision to exclude Ceglia from ownership of Thefacebook LLC.
- Requests for documents concerning the effect of the formation of Thefacebook on Ceglia's alleged rights and interests.

In contrast, examples of inappropriate discovery requests would include:

- Discovery concerning Facebook code, software, programming language, or other intellectual property, where there is no evidence that such property has any connection to Ceglia.
- Discovery of sealed testimony or documents from *ConnectU* or other litigation, where there is no mention of or reference to Ceglia or his purported rights and interests.
- Discovery of documents and information that have nothing to do with Ceglia or his purported contractual rights.

By clarifying its Order in the manner proposed above, the Court would permit discovery that is narrowly tailored to gathering information that this Court has determined is relevant to deciding whether Ceglia's claims are time-barred. This clarification would also serve interests in efficiency by foreclosing round after round of disputes and briefing during discovery regarding the scope of the Court's April 30 Order. And it would deter Ceglia from further abusing the judicial process by misconstruing that Order to allow vexatious and unduly burdensome discovery requests that have nothing to do with the resolution of Defendants' dispositive motions.

CONCLUSION

Defendants respectfully request that the Court clarify the limited scope of the discovery permitted under its April 30 Order and adopt the language proposed above.

Dated: New York, New York
May 8, 2012

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